

Remarks

The Examiner has maintained the rejection of claims 19, 20, 30 and 31 under 35 U.S.C. 102 as being anticipated by ConTeyor (DE19826429.1) and has also maintained the rejection of these claims under 35 U.S.C. 103 as being obvious over figure 1 in view of ConTeyor above. These rejections are improper and should be withdrawn.

CONTEYOR (DE19826429.1) IS AN IMPROPER REFERENCE AND MAY NOT BE USED IN ANY REJECTION OF THESE CLAIMS !

The publication date of DE19826429.1 is too late to be a useable reference against the present application. DE19826429.1 was published on December 23, 1999 as was its PCT counterpart PCT/EP99/04088 claiming priority from DE19826429.1. PCT/EP99/04088 was filed June 14, 1999, The present application claims priority from German Patent Application 19914027.8 filed March 27, 1999, nine months prior to the publication of cited German reference and three months prior to the filing date of PCT/EP99/04088. The cited German reference and its PCT counterpart may therefore not be used as prior art under any of 35 U.S.C. 102(a), 35 U.S.C. 102(b) or 35 U.S.C. 102(e). The priority date of the present application is clearly the effective filing date for prior art purposes overcoming both the publication date of the cited German reference and the PCT filing date of PCT/EP99/04088 (nationalized as issued U.S. Patent 6,497,542).

Even if the priority date were not the effective filing date for the present application, it is clear evidence that the present inventors made their invention before the publication of the cited German reference thus making a rejection under 35 U.S.C. 102(a) clearly improper over the cited

reference. Further, even if the priority date were not the effective filing date for the present application, the original PCT filing date of March 24, 2000 is less than one year from the publication date of the cited German reference thus making application of the cited reference improper under 35 U.S.C. 102(b).

ANY REJECTION UTILIZING GERMAN PATENT APPLICATION DE 19826429 OR THE PCT U.S COUNTERPART 6,497,542 CLAIMING PRIORITY THEREFROM MUST THEREFORE BE WITHDRAWN.

In any case, ConTeyor DE 198 26 429 does not disclose or suggest the structure recited by the present claims. No attachment that provides a defined downward stressing force, required by the present claims, is taught or in any way suggested by ConTeyor DE 198 26 429 whether or not it is combined with Figure 1 of the present application, i.e. no attachment exterior to the pockets is provided for stabilizing a lower end of the pockets by providing a downward tensioning force, there is no disclosure or suggestion of a downward force sufficient to keep the pockets open, no hanging weight is disclosed or suggested, and no downward pulling elastic is disclosed or suggested. The bars 2 in the cited reference rest in brackets 12 and therefore do not hang on the pockets and cannot provide a downward force on the pockets to keep them open.

In the current rejection the Examiner has improperly referred to German patent publication 195 49 166. No rejection based upon this reference was maintained in the prior rejection! There is no rejection pending based upon this reference. Reference to German patent publication 195 49 166 in the present rejection is thus improper, unless the former rejection is reinstated as a new ground of rejection.

In any case, item 41 in this reference is not “exterior” to the pocket as required by rejected claims 19, 20, 30 and 31 and is not “below” the pockets as required by rejected claims. The tension provided by item 41, if any, would be above the lower end of the pocket and therefore could not stabilize it

Also, the structure of the device of the improperly cited German reference DE 198 26 429 prevents any attachment exterior to the pockets for stabilizing a lower end of the pockets by providing a downward tensioning force.

The “Stangen 2” (poles) 2 of improperly cited ConTeyor DE 198 26 420.9 are held by their ends by “Stangenhalter 12” (pole holders 12) and are prevented from downward movement. The poles thus are completely unable to provide a downward tensioning force as required by the present claims nor is any attachment or reason for providing such an attachment suggested by ConTeyor whether or not combined with “Figure 1”.

Improperly cited ConTeyor DE 198 26 429 actually teaches away from the present invention in column 6, lines 9-14 clearly saying that the material is loose or at most lightly tensioned. This is done to reduce free swinging of the bags while permitting lateral movement. Downward movement of the poles is prevented thus when the bags in any way move downward, e.g. through weight of bag contents, simple minor variation in support height, or change in bag length due to narrowing upon removal of contents, there can be no downward tensioning at all. There is simply no “defined” tensioning force as required by the present claims and as set forth on page 3, line 17 of the specification. In the case of empty bags, the pockets are longest and thus cannot be tensioned by a fixed bar or pole. This prior art state results in closing of the

pockets which is precisely contrary to the object of the present invention as set forth at the bottom of page 2 and top of page 3 of the present specification and in the present claims.

In summary, all references referred to by the Examiner are improperly cited and even if properly cited would not anticipate or suggest the present claims.

The rejections should be withdrawn and all claims should be allowed.

The examiner is again reminded that Claim 27 is dependent upon its generic base Claim 26 and should be rejoined upon allowance of Claim 26. Similarly Claim 29 is dependent upon its allowable generic base claim 27 and should also be rejoined.

The allowance of claims 21-26, 28 and 32-38 is noted with appreciation.

In view of the foregoing amendments and remarks, all claims are now in condition for allowance, which action is courteously requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael L. Dunn", followed by a long horizontal flourish.

Michael L. Dunn
Registration No. 25,330
CUSTOMER NO. 24041
Simpson & Simpson, PLLC
5555 Main Street
Williamsville, NY 14221-5406
Telephone No. 716-626-1564

Dated: February 8, 2005

MLD/mjk